

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-2058

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P/S

To be argued by
MICHAEL YOUNG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex rel.
ROY SCHUSTER,

Petitioner-Appellant,

-against-

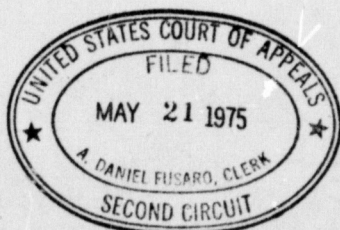
LEON J. VINCENT, Warden, Green
Haven Correctional Facility,

Respondent-Appellee.

Docket No. 75-2058

SUPPLEMENTAL BRIEF AND APPENDIX
FOR PETITIONER-APPELLANT

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



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UNITED STATES COURT OF APPEALS
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-against- :

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By order dated April 15, 1975, this Court assigned The Legal Aid Society, Federal Defender Services Unit, to represent petitioner-appellant Roy Schuster in his appeal from the order denying his habeas corpus application in the United States District Court for the Southern District of New York (The Honorable Richard J. Owen). At Mr. Schuster's request, The Legal Aid Society has filed a motion requesting that his

pro se brief be filed as the brief for petitioner-appellant in the proceedings before this Court. The following argument is submitted by The Legal Aid Society to supplement the arguments presented in petitioner-appellant's pro se brief.

THE CONSTITUTIONAL VIOLATIONS WHICH
THE STATE OF NEW YORK HAS COMMITTED
AGAINST APPELLANT SCHUSTER ARE SO
SHOCKING AS TO MANDATE THE GRANTING
OF HIS WRIT OF HABEAS CORPUS AND HIS
IMMEDIATE AND UNCONDITIONAL RELEASE.

The facts pertinent to the present proceeding are described in detail in appellant's pro se brief to this Court and in this Court's prior decision in United States ex rel. Schuster v. Herold, 410 F.2d 1071 (2d Cir.), cert. denied, 396 U.S. 487 (1969). In that decision, this Court concluded that appellant Schuster's transfer to Dannemora State Hospital for the Criminally Insane in 1941 was a violation of his constitutional rights to due process and equal protection of the law. The Court also acknowledged that Schuster would have been eligible for parole in 1948 but was denied consideration by virtue of the State's policy at that time not to consider Dannemora inmates for parole. Id., 410 F.2d at 1074, 1076.

Appellant Schuster further alleges in his present habeas corpus application that under New York State law and New York State practice, he would have been eligible for unconditional discharge from parole in 1953. See New York Correction Law,

\$220; see also appellant's pro se brief to this Court at 41.

Therefore, by virtue of the State's unconstitutional actions toward appellant Schuster, he was denied eligibility for parole from 1948 until his first parole hearing in May 1972, and the unconditional discharge he seeks in the present proceeding from 1953 to the present. The validity of petitioner-appellant's claims as to eligibility for parole and unconditional discharge, and the State's unconstitutional denial of that eligibility, are evidenced by the fact that the State transferred Mr. Schuster out of Dannemora in March 1972 and was apparently prepared to offer him parole in May of that year in order to moot the further proceedings ordered by this Court in United States ex rel. Schuster v. Herold, supra. (See the opinion of Judge Owen at 2-3). It is also evidenced by the fact that the State offered to grant Schuster a "special release agreement which would relieve [Schuster] from most of the ordinary conditions of parole." (See Judge Owen's opinion at 5). The State's failure to agree to the unconditional discharge sought by appellant was apparently based on its statutory inability to do so (cf. Judge Owen's opinion at 3).

Judge Owen denied appellant's application for writ of habeas corpus and absolute discharge on the ground that there is no legal authority for such relief. It is respectfully submitted that the District Court erred in so holding.

The facts in this case, in which unconstitutional actions

by the State resulted in appellant Schuster's incarceration in a state mental hospital for thirty-one years and his ineligibility for unconditional discharge for more than two and a half decades are so offensive to our system of justice that constitutional due process mandates the conclusion that the State has lost its authority to keep appellant Schuster under any form of incarcerated or non-incarcerated supervision. As the Supreme Court held, in Rochin v. California, 342 U.S. 165, 169 (1965):

Regard for the requirements of the Due Process Clause "inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceeding [resulting in a conviction] in order to ascertain whether they offend those canons of decency and fairness which express the notions of English-speaking peoples even toward those charged with the most heinous offenses." Malinski v. People of the State of New York, ... 324 U.S. 789.... Due process of law is a summarized constitutional guarantee of respect for those personal immunities which ... are "so rooted in the traditions and conscience of our people as to be ranked as fundamental," Snyder v. Commonwealth of Massachusetts, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674, or are "implicit in the concept of ordered liberty." Palko v. State of Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288.

See also United States v. Archer, 486 F.2d 670 (2d Cir. ... 1973). That constitutional due process requirements pertain also to post-conviction actions by the State is well established in our system of law.

Appellant Schuster submits that the State's unconstitutional actions and the extensive prejudice suffered as a re-

sult of those actions "shocks the conscience" and "is bound to offend even hardened sensibilities." Rochin v. California, supra, 342 U.S. at 172. In Rochin, the remedy was the suppression of the evidence seized by the offensive state conduct. It is clearly established, however, that this Court is empowered under the due process clause to formulate whatever remedy is necessary to vitiate the effect of the State's misconduct. See eg. United States v. Toscanino, 500 F2d 267, 275, rehearing denied en banc, 504 F2d 1380 (2d Cir. 1974).

The District Court, in dismissing appellant's petition, noted that "he holds the keys to his cell, but will not use them" (Judge Owen's opinion at 5). Mr. Schuster does not, however, hold "the keys" to his unconditional discharge -- the only appropriate remedy in light of the State's egregious misconduct toward this man. It is respectfully submitted that constitutional due process and the facts in this case mandate that relief and empower this Court to grant it.

CONCLUSION

For the foregoing reasons and the reasons set out in appellant Schuster's pro se brief to this Court, the order of the District Court dismissing the petition for writ of habeas corpus should be reversed, and this Court should enter an order granting appellant Schuster unconditional release from the custody of the State of New York.

Respectfully submitted,

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MICHAEL YOUNG,
Of Counsel

May 19, 1975

SUPPLEMENTAL APPENDIX

PRO SE

74 CIV. 1705

ATTORNEYS

Depositions

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JUDGE OWEN

74 CIV. 1705

PRO

DATE	PROCEEDINGS	Date Order Judgment N
Apr.17,74	Filed petition for writ of habeas corpus.	
Apr.17,74	Filed order granting petitioner to proceed in forma pauperis, Pierce,J.	
May 3,74	Filed Order extending Respondents time to answer to petitioners writ to 5/10/74, Bauman,J.	
Jun21,74	Filed Order granting respondent an extension of time for filing to June 21,1974..Knapp	
June 24,74	Filed Respondents answer to petitioner application for writ of habeas corpus	
Jul.15,74	Filed Traverse on return of writ of Habeas Corpus, Petitioner.	
Jul.15,74	Filed Notice of Assignment to Owen,J.	
Nov. 19-74	Filed writ haveas corpus Re: Roy Schuster - Ret. 11-22-74	
11-22-74	PTC Held Owen,J.	
Jan. 16-75	Filed petitioner's motion to decide this civil action.	
Mar.27-75	Filed MEMORANDUM OPINION #42,111--Petition dismiss. So Ordered--Owen, J. Notice Mailed by Pro Se Clerk.	
Apr.7-75	Filed order-Certificate of probable cause and informa pauperis on appeal granted. So Ordered--Owen, J.	
Apr.8-75	Filed plttf's notice of appeal from the decision & order denying and dismissing petition on March 27,1975. (Notice mailed by Pro Se Clerk to Roy Schuster #17722, Drawer B., Stormville, N.Y.12582 and to Louis J. Lefkowitz, Atty Gen'l, 2 World Trade Center N.Y.C.	

CERTIFICATE OF SERVICE

May 19, 1975

I hereby certify that a copy of the supplemental brief and appendix for appellant Schuster has been mailed to the Attorney General of the State of New York.

Michael A. V. 7